

TESTIMONY OF PETER KUHNMUENCH, EXECUTIVE DIRECTOR

INSURANCE INSTITUTE OF MICHIGAN

HOUSE INSURANCE COMMITTEE/JULY 16, 2009

GOOD MORNING, MY NAME IS PETER KUHNMUENCH AND I AM THE EXECUTIVE DIRECTOR FOR THE INSURANCE INSTITUTE OF MICHIGAN. THE INSURANCE INSTITUTE OF MICHIGAN IS THE LARGEST MICHIGAN TRADE ASSOCIATION REPRESENTING THE INTERESTS OF THE PROPERTY AND CASUALTY INSURANCE INDUSTRY. OUR MEMBER COMPANIES WRITE WELL OVER THREE QUARTERS OF ALL PERSONAL AUTOMOBILE POLICIES IN THE STATE OF MICHIGAN AND TWO THIRDS OF ALL HOME OWNERS POLICIES. OUR MEMBERS ALSO WRITE WORKERS COMPENSATIONS INSURANCE, ALL FORMS OF BUSINESS AND COMMERCIAL INSURANCE, MEDICAL MALPRACTICE AND LEGAL LIABILITY INSURANCE, MORTGAGE GUARANTEE, SURETY, FARM OWNERS AND CREDIT INSURANCE.

I AM HERE THIS MORNING TO VOICE OUR STRONG OPPOSITION TO THE ENTIRE PACKAGE OF BILLS BEFORE THIS COMMITTEE. WITHOUT EXCEPTION, THIS LEGISLATION IS BOTH DUPLICATIVE AND ULTIMATELY COSTLY TO INSURERS AND THEIR POLICYHOLDERS.

WE DO NOT BELIEVE THAT THE LEVEL OF COMPLAINTS AS DOCUMENTED BY THE OFFICE OF FINANCIAL AND INSURANCE REGULATION'S OWN STATISTICS, CONSTITUTES A JUSTIFICATION FOR WHOLESALE CHANGES TO THE REGULATORY PROTECTIONS CURRENTLY AFFORDED CONSUMERS UNDER CURRENT STATUTE.

THESE CURRENT PROTECTIONS INCLUDE PROVISIONS UNDER:

1. THE INSURANCE CODE OF 1956
2. THE EXISTING WHISTLE BLOWERS PROTECTION ACT OF 1980, AND
3. THE MICHIGAN CONSUMER PROTECTION ACT OF 1976

CHAPTER 20 OF THE INSURANCE CODE ALONE PROVIDES 63 DETAILED SECTIONS OF UNIFORM TRADE PRACTICES THAT INSURERS ARE REQUIRED TO COMPLY WITH. UNDER SECTION 2006 OF THAT CHAPTER, INSURERS WHO FAIL TO PAY BENEFITS ON A TIMELY BASIS TO THE INSURED, TO AN INDIVIDUAL OR ENTITY ENTITLED TO PAYMENTS ON BEHALF ON AN INSURED, OR TO A THIRD PARTY TORT CLAIMANT, ARE SUBJECT TO 12% INTEREST ON THOSE CLAIMS. FURTHERMORE, UNDER SECTION 3148 OF THE INSURANCE CODE, AN ATTORNEY IS ENTITLED TO A REASONABLE FEE FOR ADVISING AND REPRESENTING A CLAIMANT IN AN ACTION FOR PERSONAL OR PROPERTY PROTECTION INSURANCE BENEFITS WHICH ARE OVERDUE. THE ATTORNEY'S FEE SHALL BE A CHARGE AGAINST THE INSURER IN ADDITION TO THE BENEFITS RECOVERED, IF THE COURT FINDS THAT THE INSURER UNREASONABLY

REFUSED TO PAY THE CLAIM OR UNREASONABLY DELAYED IN MAKING PROPER PAYMENT.

UNDER SECTION 2026 OF CHAPTER 20 INSURERS ARE PROHIBITED FROM:

- MISREPRESENTING PERTINENT FACTS OR INSURANCE POLICY PROVISIONS RELATING TO INSURANCE COVERAGE ISSUE.
- FAILING TO ACKNOWLEDGE PROMPTLY OR TO ACT REASONABLY AND PROMPTLY UPON COMMUNICATIONS WITH RESPECT TO CLAIMS ARISING UNDER INSURANCE POLICIES.
- FAILING TO ADOPT AND IMPLEMENT REASONABLE STANDARDS FOR THE PROMPT INVESTIGATION OF CLAIMS ARISING UNDER INSURANCE POLICIES.
- REFUSING TO PAY CLAIMS WITHOUT CONDUCTING A REASONABLE INVESTIGATION BASED UPON THE AVAILABLE INFORMATION.
- FAILING TO AFFIRM OR DENY COVERAGE OF CLAIMS WITHIN A REASONABLE TIME AFTER PROOF OF LOSS STATEMENTS HAVE BEEN COMPLETED.
- FAILING TO ATTEMPT **IN GOOD FAITH** TO EFFECTUATE PROMPT, FAIR, AND EQUITABLE SETTLEMENT OF CLAIMS IN WHICH LIABILITY HAS BECOME REASONABLY CLEAR. (SO GOOD FAITH VIOLATIONS ARE ALREADY ILLEGAL UNDER THE INSURANCE CODE)

- COMPELLING INSURED TO INSTITUTE LITIGATION TO RECOVER AMOUNTS DUE UNDER AN INSURANCE POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS DUE THE INSURED.
- ATTEMPTING TO SETTLE A CLAIM FOR LESS THAN THE AMOUNT TO WHICH A REASONABLE PERSON WOULD BELIEVE THE CLAIMANT WAS ENTITLED.

UNDER SECTION 2028 OF CHAPTER 20 OF THE INSURANCE CODE, THE COMMISSIONER OF INSURANCE SPECIFICALLY HAS THE POWER TO EXAMINE AND INVESTIGATE THE AFFAIRS OF A PERSON ENGAGED IN THE BUSINESS OF INSURANCE TO DETERMINE WHETHER THE PERSON HAS BEEN OR IS ENGAGED IN ANY UNFAIR OR DECEPTIVE ACT OR PRACTICE PROHIBITED BY CHAPTER 20.

SECTION 2032 OF CHAPTER 20 ALSO EMPOWERS THE COMMISSIONER TO SUBPOENA WITNESSES AND COMPEL SUCH TESTIMONY AS PART OF HIS OR HER INVESTIGATION UNDER THE THREAT OF CONTEMPT OF COURT FROM THE INGHAM COUNTY CIRCUIT COURT. FURTHERMORE, ANY PERSON COMPELLED TO TESTIFY IN SUCH A PROCEEDING WOULD BE PROTECTED AGAINST SELF-INCRIMINATION RELATIVE TO SUCH HEARING.

WITH RESPECT TO PENALTIES UNDER THE ACT, THE COMMISSIONER MAY ASSESS MONETARY PENALTIES OF UP TO \$500 FOR EACH VIOLATION OF THE ACT, NOT TO EXCEED AN AGGREGATE PENALTY OF \$5,000, UNLESS THE INSURER KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THEY WERE IN VIOLATION OF CHAPTER 20, THEN THE PENALTY MAY BE UP TO \$2,500 PER VIOLATION, NOT TO EXCEED AN AGGREGATE PENALTY OF \$25,000.

THE COMMISSIONER MAY ALSO SUSPEND OR REVOKE THE LICENSE OR CERTIFICATE OF AUTHORITY OF AN INSURER, AND

MAY ORDER THE REFUND OF ANY OVERCHARGES.

THE COMMISSIONER ALSO POSSESSES CEASE AND DESIST AUTHORITY, AND VIOLATIONS OF THOSE ORDERS ARE SUBJECT TO A MONETARY PENALTY OF UP TO \$10,000 FOR EACH VIOLATION AND SUSPENSION OR REVOCATION OF THE INSURER'S LICENSE OR CERTIFICATE OF AUTHORITY.

NOW WITH REGARD TO THE PROPOSED WHISTLEBLOWER'S PROTECTIONS, INSURERS ARE ALREADY SUBJECT TO THE MICHIGAN WHISTLEBLOWER'S PROTECTIONS ACT OF 1980. IF THE ADVOCATES OF THIS LEGISLATION FEEL THAT THE PUBLIC IS

INADEQUATELY AFFORDED PROTECTIONS FROM THEIR EMPLOYERS, WE WOULD STRONGLY SUGGEST THEY CONSIDER BOLSTERING THE PROVISIONS OF THAT ACT WHICH APPLIES TO ALL EMPLOYERS EQUALLY, RATHER THAN SINGLING OUT ONE INDUSTRY FOR DISPARATE TREATMENT.

FINALLY, I WOULD SUGGEST THAT COMMITTEE MEMBERS TAKE NOTE OF SECTION 21 OF THE MICHIGAN CONSUMER PROTECTION ACT OF 1976 WHICH APPEARS TO AFFORD THE INSURANCE COMMISSIONER EVEN GREATER AUTHORITY TO INVESTIGATE INSURERS WHO MAY BE ENGAGED IN METHODS, ACTS OR PRACTICES WHICH ARE UNLAWFUL UNDER THAT ACT, AND REPORT HIS OR HER FINDING TO THE ATTORNEY GENERAL.

THE PREVIOUS TESTIMONY SUGGESTS THAT CURRENT MICHIGAN LAW SOMEHOW DOESN'T ADEQUATELY PROTECT CONSUMERS FROM WRONGFUL DENIALS IS SIMPLY NOT TRUE. NOT ONLY DO CONSUMER HAVE RECOURSE WHEN THEY BELIEVE THEY HAVE BEEN UNFAIRLY DENIED INSURANCE BENEFITS, BUT THEY HAVE A PROCESS ADMINISTERED BY THE INSURANCE COMMISSIONER HIM OR HERSELF, WHICH ELIMINATES THE NEED TO ENGAGE IN COSTLY AND TIME CONSUMING LITIGATION. AS YOU CONSIDER THESE LEGISLATIVE PROPOSALS BEFORE YOU, PLEASE BE FULLY AWARE OF WHAT THE LAW DOES AND DOES NOT PROVIDE OUR CITIZENS.

WE'VE HEARD NUMEROUS ALLEGATIONS OF BAD FAITH BEHAVIOR LEVELED AGAINST INSURANCE COMPANIES. AND IF THOSE CHARGES ARE ACCURATE, THE CURRENT LAW CLEARLY PROHIBITS THOSE ACTIONS AND PROVIDES, **IN FACT COMPELS**, THE COMMISSIONER OF INSURANCE TO ACT ON BEHALF OF THESE INDIVIDUALS.

BUT THE COMMISSIONER'S OWN STATISTICS SUGGEST THAT THERE HAS BEEN A LONG TERM DECLINE IN THE CONSUMER COMPLAINTS REGISTERED WITH HIS OFFICE. I WOULD SUGGEST THAT WE HAVE A COMMUNICATION OR INFORMATIONAL PROBLEM, NOT A STATUTORY FAILURE. WE NEED TO BETTER INFORM CONSUMERS WHO ARE TRULY HARMED THAT THERE IS A MECHANISM FOR THEM TO SEEK RELIEF WITHOUT THE COSTS AND DELAYS ASSOCIATED WITH PRIVATE LITIGATION.

THE OFFICE OF FINACIAL AND INSURANCE REGULATION'S OWN ANALYSIS OF THESE BILLS RECOGNIZES THAT NEW PRIVATE RIGHT OF ACTION, AWARDING OF SPECIFIC DAMAGES AND TREBLE DAMAGES WILL ENCOURAGE THE FILING OF ADDITIONAL LAWSUITS. THIS WILL HAVE THE NEGATIVE AFFECT OF ENCOURAGING INSURERS TO PAY CLAIMS WHICH THEY BELIEVE ARE NOT COVERED OR TO PAY HIGHER AMOUNTS

THAN THEY BELIEVE ARE JUSTIFIED, IN ORDER TO AVOID EXPENSIVE, TIME CONSUMING LITIGATION.

THE ANALYSIS GOES ON TO FURTHER ACKNOWLEDGE THAT POLICYHOLDERS ALREADY HAVE THE RIGHT TO SUE FOR BREACH OF CONTRACT AND TO RECOVER FINANCIAL LOSSES THAT RESULT FROM THAT BREACH. **THE ANALYSIS ALSO RECOGNIZES THAT ALL OF THESE COSTS WILL BE PASSED ON TO ALL POLICYHOLDERS.**

CONSIDERING THE STATE OF THE MICHIGAN ECONOMY, ITS HIGH UNEMPLOYMENT RATE AND THE FINANCIAL STRESS FACED BY MANY OF OUR CITIZENS, PURSUING LEGISLATION THAT WILL ADD TO THE COST OF INSURANCE SEEMS PARTICULARLY ILL-CONCEIVED.

I APPRECIATE THE OPPORTUNITY TO SHARE THESE THOUGHTS WITH THE COMMITTEE THIS MORNING AND NOW WOULD LIKE TO INTRODUCE MR JAMES HEWSON, AN ATTORNEY WITH HEWSON & VAN HELLEMONT OF OAK PARK MICHIGAN. MR. HEWSON HAS REPRESENTED ALLSTATE INSURANCE COMPANY IN THE PAST AND IS HERE TO DISCUSS SOME ISSUES RAISED IN YESTERDAY'S TESTIMONY RELATIVE TO ALLSTATE'S CLAIMS SETTLEMENT PROCESS.

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MISSAUKEE

In the matter of LORI KENYON WEINEL,

Case No.
Hon.

JAMES F. HEWSON (P27127)
HEWSON & VAN HELLEMONT, P.C.
Attorney for Allstate Insurance Company
29000 Lorraine, Suite 100
Warren, MI 48093
(586) 578-4500

**BRIEF IN SUPPORT OF PETITION FOR APPOINTMENT OF
PERMANENT GUARDIAN OF INCAPACITATED INDIVIDUAL**

NOW COMES, Interested Party, Allstate Insurance Company, by and through its attorneys, Hewson & Van Hellemont, P.C., and for its Petition for Appointment of a Guardian of an Incapacitated Individual, Lori Kenyon Weinell, represents the following:

This case involves a series of circumstances surrounding the care of Lori Kenyon Weinell, a quadriplegia, for whom Allstate has been paying benefits since her accident in 1985. Cutting to the heart of the matter, the real conflict is not with the injured person (although her medical condition prevents her from caring for herself), it is with her family.

Lori Kenyon Weinell's mother, Marian Kenyon, was convicted of insurance fraud in the Missaukee County Circuit Court as a result of her activities relating to the care of Lori Kenyon Weinell. Mrs. Kenyon has repeatedly and consistently interfered with the care of her daughter which as resulted in the greatly increased cost of Lori's care.

Allstate Insurance Company has paid, and continues to pay, every outstanding

benefit for the care, recovery, and rehabilitation of Lori Kenyon Weinel. This includes a stay at the Rehabilitation Institute of Chicago (RIC) which produced a protocol for Lori's subsequent treatment. Unfortunately, Mrs. Kenyon did not agree with the RIC treatment plan and has not followed, or even shown, the RIC guidelines to the nursing staff charged with Lori's care (**Exhibit 2** - Deposition of Belinda Coker, pp. 58, 59, & 61). Additionally, all Lori's case management has been paid to date as well as the hiring of several nursing agencies for her care. Again, the Kenyon's have chased away any case manager and care workers who have not followed their fraudulent wishes regarding their daughter's care.

Previously, Mr. and Mrs. Kenyon have stashed their daughter's medical supplies (paid for by Allstate) and misrepresented Lori had run out of supplies. Marian Kenyon formed her own company and undertook to lease the modified van purchased for her daughter as well as the durable medical equipment purchased for Lori's care. The Kenyon's have undertaken the practice of intimidating the home nursing staff into falsely charting Lori's medical supplies as being low to empty in order to further hoard supplies at Allstate's expense.

The documented instances of Mr. and Mrs. Kenyon's interference swayed Judge Paula Manderfield of the Ingham County Circuit Court to issue a preliminary injunction and temporary restraining order against both Mr. And Mrs. Kenyon from interfering in any way with the care of Lori Kenyon Weinel. (**Exhibit 1** - Preliminary Injunction) The injunction states in pertinent part:

"...Marian and Forrest Kenyon are restrained and enjoined during the pendency of this Order, and until further Order of the Court, from the

following activities:

1) Contacting, abusing, interviewing, regulating, overseeing or interfering with the actions of any of the nursing or home health care aid staff provided...to Lori Kenyon Weinel.

2) Contacting, talking to, discussing with, harassing or otherwise having interaction with any doctors, health care providers or other persons providing services to Lori Kenyon Weinel;

* * *

4) Interfering with any services being provided for or funded by Allstate Insurance Company to Lori Kenyon Weinel;

* * *

6) This Preliminary Injunction is issued because this Court has seen evidence that irreparable harm will occur to Lori Kenyon Weinel's health and well-being, and to Allstate Insurance Company should the activities of Marian and Forrest Kenyon continue as they have in the past; (**Exhibit 1**)

Despite the injunction of Judge Manderfield in the Ingham County Circuit, recent discovery in the civil action filed by Allstate against Mr. and Mrs. Kenyon has further indicated that the Kenyon's continue to interfere and, consequently, greatly inflate the cost of care for Lori Kenyon Weinel to Allstate. The situation in the Kenyon household exposes Lori Weinel to a dangerous psychological and physical environment by living with her mother and her father.

It is anticipated that the parents of Lori Kenyon Weinel will contest the standing of Allstate Insurance Company to file the instant petition. In response, Allstate relies on MCL 700.1105(c) which lays out the definition of an "interested party" capable of bringing a petition for guardianship. The statute states:

(c) "Interested person" or "person interested in an estate"

includes, **but is not limited to**, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and **any other person that has a property right in or claim** against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. **Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding**, and by the supreme court rules. MCL 700.1105

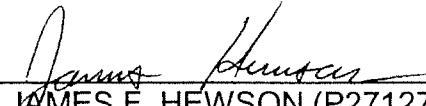
As such, Allstate has standing to request such dramatic action because we are paying for the medical care that she is receiving and are being forced to pay additional monies because of the poor treatment that she is exposed to by her parents. As the provisions of MCL 700.1105 state, the statute does not provide an exhaustive list of the parties with standing to bring a guardianship petition. Moreover, Allstate has an identifiable interest in the action as it provides the funds to support the rehabilitation, recovery, and care of Lori Kenyon Weinel that has been so disastrously misappropriated by Mr. and Mrs. Kenyon.

WHEREFORE, Interested Party, Allstate Insurance Company, respectfully requests this Honorable Court grant its Petition for Appointment of a Permanent Guardian of an Incapacitated Individual and issue an order appointing an permanent independent guardian, at the Court's discretion, over the care and treatment of Lori Kenyon Weinel.

WHEREFORE, Interested Party, Allstate Insurance Company, additionally requests this Honorable Court render a determination as to the adequacy of Lori Kenyon Weinel's care and whether it presents a significant risk to her immediate health and well-being.

Respectfully submitted,

HEWSON & VAN HELLEMONT, P.C.

By: 
JAMES F. HEWSON (P27127)
Attorney for Defendant
29900 Lorraine, Suite 100
Warren, MI 48093
(586) 578-4500

Dated: January 8, 2007

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ALLSTATE INSURANCE COMPANY,
a foreign insurance company,

Plaintiff,

v

Case No. 05-304-CZ
Hon. Paula J.M. Manderfield

MARIAN KENYON and
FOREST KENYON,

Defendant.

JAMES F. HEWSON (P27127)
HEWSON & VAN HELLEMONT, P.C.
Attorney for Plaintiff
299000 Lorraine, Suite 100
Warren, MI 48093
(586) 578-4500

MARION KENYON
FOREST KENYON
In Pro Per

PRELIMINARY INJUNCTION

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan,
on MAY 19 2005

PRESENT: HON. PAULA J.M. MANDERFIELD
Circuit Court Judge

This matter having come on to the Court pursuant to the Order to Show Cause previously issued in this matter, and the Court having conducted trial in the matter of *Lori Kenyon Weinel v Allstate Insurance Company*, having read the exhibits and having heard the arguments of counsel, and the Court being further fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Marion Kenyon and Forest Kenyon are restrained and enjoined during the pendency of this Order,

and until further Order of the Court, from the following activities:

1. Contacting, abusing, interviewing, regulating, overseeing or interfering with the actions of any of the nursing or home health aid staff provided by Compassionate Care Home Health Services, Inc., or any successors thereto, to Lori Kenyon Weinel; and

2. Contacting, talking to, discussing with, harassing or otherwise having interaction with any doctors, health care providers or other persons providing services to Lori Kenyon Weinel; and

3. Contacting, discussing with, overseeing, interfering with or otherwise participating in decisions with any durable medical goods suppliers or other suppliers of goods and services to Lori Kenyon Weinel; and

4. Interfering with any services being provided for or funded by Allstate Insurance Company to Lori Kenyon Weinel; and

5. Reviewing, copying, editing or otherwise handling the nurses notes, tracking sheets and other documents relative to the care of Lori Kenyon Weinel; and

6. This Preliminary Injunction is issued because this Court has seen evidence that irreparable harm will occur to Lori Kenyon Weinel's health and well-being, and to Allstate Insurance Company should the activities of Marion and Forest Kenyon continue as they have the in past;

IT IS FURTHER ORDERED AND ADJUDGED that any violation of this Preliminary Injunction shall result in the finding of contempt of Court and shall be punished accordingly

IT IS FURTHER ORDERED AND ADJUDGED THAT A GUARDIAN AD LITEM BE APPOINTED FROM MISSISSIPPI COUNTY TO REPRESENT LORI KENYON-WEINEL'S INTERESTS.

PAULA J.M. MANDERFIELD
Circuit Court Judge

EXHIBIT 2

1 Q Her condition is a critical condition; true? -- critical in
2 a --

3 A Well, it's critical in that she needs somebody there to do
4 everything for her.

5 Q She can't move on her own?

6 A No. When she's in her wheelchair, of course, she has some
7 mobility.

8 Q Can she transfer?

9 A Oh, no.

10 Q Can she drive?

11 A No.

12 Q Make her own meals?

13 A No.

14 Q Provide any of her ADL kind of care?

15 A No.

16 Q She needs somebody to assist in that regard?

17 A She needs -- yes.

18 Q Is there any reasonable way to accommodate an emergency
19 that might arise other than having an on-staff nurse, a
20 nurses aide there?

21 A Not that I'm aware of.

22 Q Okay. You were asked some questions about -- I thought it
23 was an RCI.

24 A An RIC?

25 Q Oh. I'm sorry. RIC guidelines.

1 A RIC; the recommendations; right.

2 Q Have you reviewed those recommendations?

3 A No. Nobody will come up with them for me. I've asked for

4 them and they don't show them to me.

5 Q Who have you asked for those?

6 A I think I -- I don't know if I asked Kathy Wallace or not.

7 I don't remember. And I think I have asked Marian. But it

8 could be that I just thought I asked her. I don't remember

9 because it's been awhile.

10 Q And when you asked Kathy Wallace --

11 A I said I don't remember if I asked Kathy Wallace.

12 Q Well, okay. It was my understanding from your testimony

13 that you were asked some questions about whether or not

14 those guidelines should be followed. But you've never seen

15 the guidelines?

16 A No, I haven't.

17 Q So you don't know whether they have been followed or not;

18 is that right?

19 A No. You know, only what I've been told.

20 Q Have they been followed from what you've been told?

21 A No.

22 Q All right. Just give me a few minutes here, Ms. Coker.

23 I'm just looking through my notes. Has the shortage of

24 supplies that you have described whether it's blue pads,

25 alcohol wipes, cascade water and 4-by-4's -- is that --

1 A Right.

2 MR. TRAHEY: Okay. I have no further questions.

3 Thank you, Ms. Coker.

4 MR. WILLIAMS: Ms. Coker, I just have a couple
5 extraneous questions for you, and then we'll get you out of
6 here as quickly as possible.

7
8 EXAMINATION BY MR. WILLIAMS:

9 Q I believe that you stated on cross-examination that you've
10 never actually seen the RIC guidelines; is that correct?

11 A Right; I never have.

12 Q So having never seen them would you be able to opine
13 whether or not those guidelines were actually being
14 followed?

15 A Only by what people have told me.

16 Q And who's told you?

17 A Well, Marian has told me we're not following them.

18 Q Marian has told you. So it's your understanding that
19 Marian has the RIC guidelines, then?

20 A I assume she has them. Because she wouldn't know that we
21 were not following them if she didn't have them, I wouldn't
22 think.

23 Q Do you know any other members of the nursing staff that
24 have seen the RIC guidelines?

25 A No, I don't know.

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STATE OF MICHIGAN
MISSAUKEE COUNTY PROBATE COURT

IN THE MATTER OF

FILE NO. 2007-8265-GA

LORI KENYON WEINEL.

James F. Hewson,
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At a session of said court held in the City of
Lake City, State of Michigan, on March 25,
2009.

Present: Honorable Charles Parsons
Probate Court Judge

OPINION OF THE COURT AND ORDER

This matter has come before the court on a Motion by Paul Renzo, attorney for Lori Kenyon Weinell, for attorney fees. The motion was made in court at the March 25th hearing and was related to Mr. Renzo's efforts to terminate the guardianship on behalf of his client, Ms. Weinell. At that hearing, the Court requested that the attorneys submit written briefs regarding the request for attorney fees and both attorneys have complied with this request.

The Court notes that up until this decision regarding attorney fees, almost all matters that have come before the court in this case have been settled by a stipulation of the parties and not by a decision of the Court after a contested hearing. Specifically, on March 11, 2008, the parties, including Lori Kenyon Weinell, stipulated to a full guardianship for Ms. Weinell with Robin Stevens being appointed as the guardian. Ms. Weinell was adjudicated to be mentally incompetent. On November 19, 2008, the parties stipulated to a full psychological and

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neuro-psychological examination for Lori Kenyon Weinel and determined where she would temporarily reside pending further court proceedings. On December 16, 2008, the parties entered into another stipulation with an order entered on December 29, 2008, which order modified the prior order on 11/19/08 regarding where Ms. Weinel would reside. Finally, on March 25, 2009, the parties stipulated to a termination of the guardianship and the entry of another order in the nature of a protective proceeding.

The court further notes that it finds the original petition filed by Allstate Insurance Company requesting that a guardianship be established for Lori Kenyon Weinel to be serious and well considered and not a frivolous pleading in any manner. There is no dispute to the fact that Ms. Weinel is a quadriplegic and totally dependent for her care on the good will of others. There is no dispute to the fact that prior to the filing of this case, Ms. Weinel resided with her parents and the that her mother had been convicted of insurance fraud regarding the medical supplies and other materials provided for the care of Ms. Weinel. In the brief filed by Allstate in support of its petition, it alleged that the present twenty-four hour care given to Ms. Weinel, as provided through Allstate Insurance coverage, was seriously jeopardized by the living conditions and family interference within the Kenyon home. The issue presented to the court was whether or not Lori Kenyon Weinel lacked sufficient understanding or capacity to make or communicate informed decisions due to her physical illness or disability as demonstrated by her acceptance of potentially harmful living conditions.

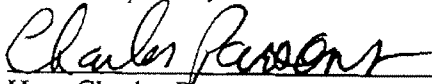
Several theories were offered to the court regarding the basis for Ms. Weinel's lacking the capacity or understanding to make informed decisions. Her ability to communicate was not in question. One theory was brain damage resulting from her car accident and another was her inability to appropriately deal with the undue and potentially harmful influence from family members. The Court had ordered psychological examinations in order to assist the Court in reaching its decision regarding the termination of the guardianship. Ms. Weinel, at times, purposely thwarted this order of the court by refusing to be tested. Ultimately, the Court never ruled on the later petitions to terminate the guardianship except through the stipulation of the parties.

The Court finds that, in this case, the guardian diligently and with the best intentions tried to improve the quality and diversity of Ms. Weinel's life. She provided Lori with spending money and trips to the mall in addition to attendance at cultural activities. The guardian arranged for excellent medical attention. The guardian improved the quality of Lori Kenyon Weinel's life. The guardian was confronted with immense family hostility and rather surprisingly remained dutiful to her responsibilities despite their confrontational opposition. Having said all this, the question came down to whether or not Lori Kenyon Weinel had the competence to make poor and potentially harmful decisions regarding her living conditions in the same manner that many other fully competent individuals decide versus whether her reliance on the possibly harmful influences of her family members, given her quadriplegic condition, established the necessary element of "lack of sufficient understanding." The issue was legitimate and never frivolous.

Therefore, the Court finds no basis for awarding attorney fees to Mr. Renzo in this case. The court finds that there is no legal basis to give attorney fees and costs to Mr. Renzo, and if there was a legal basis, the court, in its discretion, would not give attorney fees and costs in this case. Because this case was settled by the stipulation of the parties, many potential outcomes such as a limited guardianship or a conservatorship were never addressed. That by no means diminishes the significance of the matters before the Court. Therefore,

IT IS ORDERED that Petitioner's, Paul Renzo's, request for attorney fees and costs is denied.

Dated: April 29, 2009



Hon. Charles Parsons P32759
Missaukee County Probate Court

